

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (this “Agreement”) is made as of this ___ day of May 2023 (“Effective Date”), by and between **Central Indiana Mitigation Providers, LLC**, as seller (“Seller”), and **Town of Whitestown**, as purchaser (“Purchaser”).

RECITALS

A. Seller is the sponsor and owner of that certain mitigation bank identified as **Bull-Buck Mitigation Bank**, USACE Action No.: **LRL-2021-00188** (the “Mitigation Bank”). The establishment, use, operation, and maintenance of the Mitigation Bank are subject to the requirements of that certain **Bull-Buck Mitigation Bank** Banking Instrument (“MBI”) approved by the Interagency Review Team (as defined in the MBI) on February 27, 2023.

B. Pursuant to the requirements of the Clean Water Act and regulations promulgated thereunder, Purchaser must mitigate for impacts to **0.09 acres of EMERGENT WETLAND and 0.24 acres of FORESTED WETLAND** on certain property commonly known as **Big Four Trail Extension located in Boone County, Indiana** (the “Development Impacts”).

C. Seller desires to sell, and Purchaser desires to buy, **0.18 EMERGENT WETLAND and 0.72 FORESTED WETLAND** bank credits (“Purchased Credits”) generated from the Mitigation Bank for Purchaser to mitigate for the Development Impacts, as more particularly set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutually dependent covenants contained herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree to the following terms and conditions:

1. **Sale of Credits**. Subject to the terms and conditions of this Agreement and upon thirty (30) days advance written notice to Seller from Purchaser, Seller agrees to sell, assign, convey and transfer to Purchaser, and Purchaser agrees to purchase from Seller, the Reserved Credits solely to mitigate for the Development Impacts. The parties acknowledge that the Section 404 permit process, and, if necessary, the Section 401 certification process under the Clean Water Act must be completed prior to Closing (defined below) and Purchaser may use this Agreement to satisfy its mitigation requirements for the Development Impacts as Purchaser is required to do under Permits issued by USACE Louisville District (LRL-2021-01015-DDC) and Indiana Department of Environmental Management (Permit# 2022-990-32-ERL-A).

2. **Purchase Price**. The aggregate purchase price for the Reserved Credits shall be **One Hundred Seventeen Thousand Nine Hundred Dollars and no cents (\$117,900.00)** (the “Purchase Price”), determined as follows:

a) Purchaser shall pay **One Hundred Fifteen Thousand Dollars and no cents (\$115,000.00)** per credit for 0.18 EMERGENT WETLAND credits for a total of **Twenty Thousand Seven Hundred Dollars and no cents (\$20,700.00)**.

b) Purchaser shall pay **One Hundred Thirty Five Dollars and no cents (\$135,000.00)** per credit for 0.72 FORESTED WETLAND credits for a total of **Ninety-Seven Thousand Two Hundred Dollars and no cents (\$97,200.00)**.

3. **Payment of Purchase Price.** The Purchase Price shall be paid by Purchaser to Seller in the following manner:
- a. **Purchase Price.** The Purchase Price shall be paid pursuant to Section 2(a) above, shall be paid by wire transfer to Seller of immediately available funds at Closing in full satisfaction of the Purchase Price.
4. **Closing.** Closing on the purchase and sale of the Purchased Credits (“Closing”) shall occur electronically not later than 6/30/2023. Notwithstanding any provision of this Agreement to the contrary, if the Closing has not occurred within sixty (30) days after the Effective Date, Seller, in its sole discretion, may terminate this Agreement at any time without any rights, obligations or liability to Purchaser whatsoever, and, effective upon such termination, Purchaser shall forfeit the Deposit and Seller shall be entitled to retain the Deposit.
5. **Buyer’s Deliveries.** At Closing, Buyer shall deliver to Seller the balance of the Purchase Price as provided in Section 4 above.
6. **Seller’s Deliveries.** At Closing and upon receipt of the full Purchase Price, Seller shall deliver to Purchaser the following:
- (a) a BILL OF SALE in the form attached hereto at Exhibit A in proper form and duly executed by Seller, (and/or any other documents as are reasonably necessary) evidencing the sale of the Purchased Credits to Purchaser; and
- (b) Not more than ten (10) calendar days following Closing, Seller shall deliver, or cause to be delivered, to Purchaser a copy of Seller’s ledger entry, or other documentation in a form satisfactory to the parties, recording the sale of the Purchased Credits to Purchaser as provided herein and debiting the Purchased Credits sold to Purchaser against the outstanding FORESTED AND EMERGENT WETLANDS bank credits generated from the Mitigation Bank.
7. **Closing Costs.** Seller shall pay the cost of preparing the BILL OF SALE, any taxes and costs customarily paid by sellers of credits from the Mitigation Bank, and Seller’s attorney’s fees. Purchaser shall pay the cost of any inspections and investigations, any taxes and costs customarily paid by purchasers of credits from the Mitigation Bank, Purchaser’s attorney’s fees and other costs of Closing, if any.
8. **Effect of Condemnation, Regulatory Action or Force Majeure.**
- (a) **Condemnation.** If the Mitigation Bank or any part thereof is taken prior to a Closing pursuant to eminent domain proceedings, or if such proceedings are commenced prior to a Closing, and, in either case, as a result the Seller determines that it will be unable to transfer the Purchased Credits to Purchaser at a Closing as specified in this Agreement, then either party may terminate this Agreement by providing written notice thereof to the other at any time prior to a Closing. If either party elects to terminate this Agreement as provided in this subparagraph, the Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein.
- (b) **Regulatory Action.**
- (i) If Seller is unable to transfer all of the Purchased Credits to Purchaser as provided in this Agreement because of the action or order of any regulatory agency, regardless of whether or not Seller has contested or challenged such action or order, either party may terminate this Agreement by providing written notice to the other party at any time prior to a Closing. If either party elects to terminate

this Agreement as provided in this subparagraph, the Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein. Notwithstanding the foregoing, if Seller is unable to transfer some, but not all of the Purchased Credits to Purchaser as provided in this Agreement because of the action or order of any regulatory agency, regardless of whether or not Seller has contested or challenged such action or order, this Agreement shall continue with respect to those Purchased Credits Seller is legally allowed to transfer.

9. **Force Majeure.** If Seller determines that Seller will be unable to transfer the Purchased Credits, or any part thereof, to Purchaser at a Closing as provided in this Agreement because of damage to or loss of the Mitigation Bank resulting from fire, flood, storm, drought, pandemic or other natural disaster, or from any other cause that is not the fault of Seller and is beyond Seller's reasonable ability to prevent or control (a "**Force Majeure Event**"), Seller shall notify Purchaser that Seller is unable to transfer the Purchased Credits as a result of a Force Majeure Event, whereupon either party may terminate this Agreement by providing written notice to the other party at any time prior to the scheduled date for Closing. If either party elects to terminate this Agreement as provided in this subparagraph, the Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein.

10. **Transaction Costs.** Seller shall pay the cost of preparing the documents that it is required to prepare under paragraphs 5 and 6 above and any related documents, any taxes and costs customarily paid by sellers of credits from the Mitigation Bank, and Seller's attorney's fees. Purchaser shall pay Purchaser's attorney's fees, any taxes, and any other costs customarily paid by purchasers of credits from the Mitigation Bank, if any.

11. **Limitations on Purchaser's Rights.** Seller's sale and conveyance of the Purchased Credits to Purchaser shall not constitute the conveyance or transfer of any right, interest or ownership in real property, nor shall such sale and conveyance impose upon Purchaser any right, obligation, duty or liability arising from or incident to any right, interest or ownership in real property.

12. **Default.**

(a) **By Purchaser.** If Purchaser fails to make any payment required of it hereunder in a timely manner, or fails to otherwise perform any of its other material obligations under this Agreement, or if any representation or warranty provided by Purchaser in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, Purchaser shall be deemed to be in default and, at Seller's election, in its sole and absolute discretion, Seller may terminate this Agreement and all of Seller's obligations hereunder. Upon any such termination, (A) if prior to Closing, (i) the Deposit shall be forfeited to Seller, (ii) Purchaser shall lose all of its right and privilege to purchase the Purchased Credits from Seller, (iii) Seller may notify, if required by law, USACE or other required state or authority of Purchaser's failure to fulfill its obligations under this Agreement; and (B) if after Closing (or is discovered by Seller after Closing), Seller shall have the right to pursue all remedies as may be available to Seller at law or in equity. All rights and remedies of Seller hereunder shall be cumulative and not mutually exclusive of one another.

(b) **By Seller.** If Seller defaults in performing any of Seller's material obligations under this Agreement, and such default continues for a period of thirty (30) days after Purchaser has provided written notice to Seller of such default, or if any representation or warranty provided by Seller in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, then Seller shall be deemed to be in default and (i) if prior to Closing, Purchaser's sole remedies shall be to terminate this Agreement by providing written notice thereof to Seller, and to receive a refund of the Deposit, in which event neither party shall have any further rights or obligations hereunder, except as

expressly provided herein; or (ii) if after Closing (or such default is discovered by Purchaser after Closing), Purchaser shall have the right to pursue such remedies as may be available to it at law or in equity.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTINUED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL ANY OTHER LIABILITY BE INCURRED BY EITHER PARTY FOR ANY OBLIGATIONS WHICH ARISE UNDER THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES IN TORT, CONTRACT OR OTHERWISE. EXCEPT AS OTHERWISE PROVIDED UNDER THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING THE MERCHANTABILITY OF THE PURCHASED CREDITS OR, WITH RESPECT TO THE PURCHASED CREDITS, ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY GOVERNMENTAL AUTHORITY. REDRESS FOR ANY CLAIM AGAINST SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO AND ENFORCEABLE ONLY AGAINST AND TO THE EXTENT OF SELLER'S INTEREST IN THE MITIGATION BANK. THE OBLIGATIONS OF SELLER AND PURCHASER UNDER THIS AGREEMENT ARE NOT INTENDED TO BE AND SHALL NOT BE PERSONALLY BINDING ON, NOR SHALL ANY RESORT BE HAD TO THE PRIVATE PROPERTIES OF, ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, BENEFICIARIES, MEMBERS, STOCKHOLDERS, EMPLOYEES, OR AGENTS.

(d) This Section 12 shall survive Closing or earlier termination of this Agreement.

13. **Term and Termination.** This Agreement shall be effective upon the date that all signatures and approvals are obtained. This Agreement shall commence on the Effective Date and shall terminate upon Closing, unless earlier terminated pursuant to any other provision in this Agreement.

14. **Representations and Warranties.** Each of Seller and Purchaser represents and warrants to the other now and as of Closing that: (i) it is organized and validly existing under the laws of the jurisdiction of its organization or incorporation; and (ii) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other relevant documentation and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance.

15. **Miscellaneous.**

(a) **No Joint Venture.** This Agreement is made solely for the purposes set forth herein and no joint venture, partnership or other relationship between Purchaser and Seller is created hereby.

(b) **No Third-Party Beneficiary.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and authorized assigns. The Agreement does not create or convey any rights, benefits or interests on behalf of any other person.

(c) **Assignment.** This Agreement may not be assigned by Purchaser without Seller's prior written consent in Seller's sole and absolute discretion, and any assignee shall assume the rights and obligations of its assignor.

(d) **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreement, written

or oral. This Agreement may be modified only by a written instrument duly executed by Seller and Purchaser.

(e) Choice of Laws. This agreement shall be construed, performed and enforced under the laws of the State of Illinois.

(f) Counterparts. This Agreement may be executed in one or more counterparts by the parties. All counterparts shall collectively constitute a single agreement.

(g) Notices. All notices shall be in writing and sent by hand, facsimile transmission, overnight delivery service or certified mail, return-receipt requested, to the following addresses (or such other addresses as either party may designate to the other from time to time by written notice) and any such notice of other communication shall be deemed to have been given on the day so delivered or refused by the party to whom such notice was sent (it being acknowledged that a facsimile or an e-mail transmission shall not be deemed to be a “writing”):

If to Seller: Central Indiana Mitigation Providers, LLC
 Attn: Chris Elliott
 248 Southwoods Centre
 Columbia, IL 62236

With a copy to: Michael Best & Friedrich LLP
 Attn: Michael S. Green, Esq.
 1 South Pinckney Street, Suite 700
 P.O. Box 1806
 Madison, WI 53701-1806

If to Purchaser: Town of Whitestown
 Attention: Dominic Cornett
 6210 Veterans Drive, Room 100
 Whitestown, IN 46075

(h) Legal Capacity of Signatory. Each person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal’s behalf.

[Signature page follows]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed on their behalf by their duly authorized representatives as of the date first written above.

SELLER:

CENTRAL INDIANA MITIGATION PROVIDERS,
LLC

By: _____

Name: **Chris Elliott**

Title: Authorized Agent

PURCHASER:

TOWN OF WHITESTOWN

By: _____

Name: _____

Title: _____

EXHIBIT A

BILL OF SALE

This Bill of Sale is made by Central Indiana Mitigation Providers, LLC (“Seller”) to Town of Whitestown, (“Purchaser”).

WHEREAS, Seller and Purchaser have entered into that certain Mitigation Credit Purchase Agreement dated as of _____ (“Purchase Agreement”), with respect to the sale and purchase of emergent wetlands bank credits generated within the Bull-Buck Mitigation Bank in Henry County, Indiana (“Mitigation Site”).

NOW THEREFORE, for and in consideration of the payment of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, assigns, conveys and transfers to Purchaser 0.18 emergent wetland bank credits and 0.72 forested wetland bank credits from the Mitigation Site, for the purpose of Purchaser’s mitigation of impacts to that certain property commonly known as Big Four Trail Extension located in Boone County, Indiana (LRL-2023-00211-jde and IDEM Permit# 2023-227-06-ERL-A).

Dated this _____ day of _____, 2023.

Central Indiana Mitigation Providers, LLC
a Delaware limited liability company

By: Chris Elliott, Authorized Agent